

REMARKS/ARGUMENTS

Claims 1-17 and 21-53 were pending at the time of the mailing of the outstanding Office Action. Claims 1-6, 8, 14-17, 21-34, 41, 51, and 52 are under consideration and claims 7, 9-13, 35-40, 42-50 and 53 are withdrawn from consideration. By this response, no claims have been added or cancelled. Claims 2-6 and 21-34 have been amended to eliminate a previously unrecognized lack of proper antecedent basis for the term “first wall portion” that was caused by previous amendments to the claims.

In the Office Action of 10 May 2007, the Examiner rejected claims 1, 2, 5, 6, 25, 29 and 30 under 35 U.S.C. § 102(b) as anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as obvious over US Pat. No. 5,556,414 to Turi (hereinafter “Turi”). The Examiner rejected claims 4, 8, 22, 23, 27, 29, 32, 34, and 41 under 35 U.S.C. § 103(a) as being unpatentable over Turi. Claims 3, 21, 24, 26, 28, 31, and 33 were rejected under 35 U.S.C. § 103(a) as obvious over Turi in view of US Pat. Pub. No. 2003/0208279 to Atala (hereinafter “Atala”). Claims 14-17 and 51-52 were rejected under 35 U.S.C. § 103(a) as unpatentable over Turi in view of US. Pat. No. 5,680,873 to Berg (hereinafter “Berg”).

The Examiner maintains that Turi anticipates or makes obvious the claimed stent eventhough claim 1 recites that the stent consists essentially of a tubular body and tubular body itself consists essentially of human or animal tissue. The Examiner maintains, “the term ‘consisting essentially of’ does not preclude the claimed part from being a component of a larger assembly.” The Examiner further analogizes the present claims to that of an automobile brake, stating, “An automobile brake could be defined as ‘consisting essentially of’ certain elements ... A reference which discloses the same brake as a component of an automobile could be applied against such a claim.” However, the analogy posed by the Examiner, while obviously reminiscent of the recent *KSR Int’l Inc v. Teleflex Inc.* decision by the Supreme Court (550 U. S. ____ (2007), slip opinion No. 04-1350), is not comparable to the present claims and the Examiner’s rejection of them. Turi provides a stent, not a larger structure containing a stent. Turi’s

stent however, does contain more components than the claimed stent. It is precisely this difference that distinguishes the claimed invention from Turi's stent.

The transitional phrase "consists essentially of" limits the scope of the claim to the specified materials and those that do not materially affect the basic and novel characteristics of the claimed invention. (MPEP § 2111.03) As stated in the specification (paragraphs 0005-0008), stents such as Turi's suffer from drawbacks in cost of manufacture and use. The claimed stent provides advantages over such stents by avoiding the use of mesh structures in the stent (paragraph 0011). As stated previously, Turi clearly considers the composite graft to include a vein and a cylindrical-shaped member acting together and secured to each other. (See Abstract, column 5, lines 49-57 and column 6, line 52 - column 7, line 8.) Contrary to the Examiner's characterization, Turi does not teach or suggest that the vein can be considered a stent by itself. Turi's stent is clearly taught to be a composite structure. As stated previously, Turi occasionally refers to the cylindrical-shaped member as a "stent" within this system (see abstract), but does not refer to the vein as a stent. In contradistinction, the claimed stent consists essentially of a tubular body which itself consists essentially of human or animal tissue of adequate elasticity. Therefore, the claimed stent patentably distinguishes over any stent having structural components other than a tubular body of human or animal tissue of adequate elasticity, including Turi's.

The Examiner also maintains that the vein of Turi's composite stent "would inherently support the vessel to some extent due to its inherent stiffness." However, the Examiner points to no disclosure of Turi that would indicate such stiffness. In fact, Turi provides exactly the opposite disclosure. Turi clearly relies on the cylindrical-shaped member to "(prevent) recoil and keep the vein graft tissue in place" (column 2, lines 57-59). Turi thereby teaches that a human or animal tissue may be expected to recoil from an expanded state and does not teach or suggest that a vein has sufficient stiffness as to maintain a body passageway in such an expanded state. In this way, Turi teaches away from the use of human or animal tissue essentially alone in a stent as claimed. Furthermore, the Examiner maintains that the amount of stiffness has not been claimed.

The Applicants wish to call claim 2 to the Examiner's attention. Claim 2 recites that the tubular body has a stiffness which is adequate to maintain a human or animal vessel in an expanded state.

Therefore, claim 1 patentably distinguishes over Turi which does not teach or suggest a stent consisting essentially of a tubular body which consists essentially of human or animal tissue. Withdrawal of the rejection of claim 1 is respectfully requested.

Claim 1 also patentably distinguishes over Atala and/or Berg, either alone or in combination with Turi. Atala provides a stent in which the stent is merely expanded from a first condition to a second condition with no change in the relative position of a first and a second part of the stent. Berg simply provides a guide catheter. Neither reference teaches or suggests a stent as claimed. Likewise, claims 2-6, 8, 14-17, 21-34, 41, 51, and 52, which depend from and incorporate all the limitations of claim 1, also patentably distinguish over the cited prior art.

Because the cited prior art does not teach or suggest all of the limitations of claims 1-6, 8, 14-17, 21-34, 41, and 51-52, reconsideration and withdrawal of the rejections of these claims under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a) is respectfully requested.

The Applicants maintain that generic claims 1-6, 8, 14-17, 21-34, 41, 51, and 52 patentably distinguish over the cited prior art, and therefore request rejoinder of the non-elected claims of group I, claims 7, 9-13, 35-40, 42-50, and 53. The issuance of a Notice of Allowance for claims 1-17 and 21-53 is respectfully solicited.

Because the amendments presented herein eliminate a previously unrecognized lack of proper antecedent basis in the claims, and place the claims under consideration in condition for allowance, entry of this Amendment after Final Rejection is appropriate. None of the amendments will necessitate an additional search. In the event that the

Examiner disagrees with the Applicants regarding the allowability of the pending claims, entry of the Amendment should still be made on the grounds that the amendments simplify matters under consideration for appeal.

The outstanding Office action was mailed on 10 May 2007. The Examiner set a shortened statutory period for reply of 3 months from the mailing date. Therefore, no petition for an extension of time is believed to be required with the filing of this response. Nevertheless, the Applicants hereby make a conditional petition for an extension of time for response in the event that such a petition is required. No fees are believed to be due with this response. However, in the event that a fee for the filing of his response is insufficient, the Commissioner is authorized to charge any fee deficiency or to credit any overpayment to Deposit Account 15-0450.

Respectfully submitted,

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